

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

TAKAHARU MIZUTANI

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

SWARTZ SWIDLER, LLC 1878 MARLTON PIKE E., SUITE 10
CHERRY HILL, NJ 08003 856-685-7420

DEFENDANTS

THE HAPPY HUCKSTER, CORP. ADN STEPHEN
KLINGHOFFER

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
FLSA AND PMWA AND WPCL

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/13/2011

SIGNATURE OF ATTORNEY OF RECORD

s/ Justin L. Swidler

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Takaharu Mizutani

CIVIL ACTION

v.

The Happy Huckster, et al.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>7/13/11</u>	<u>Justin L. Swidler</u>	<u>Plaintiff -</u>
Date	Attorney-at-law	Attorney for
<u>856-685-7420</u>	<u>856-685-7417</u>	<u>jswidler@sunrftz-legal.com</u>
Telephone	FAX Number	E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 7216 Woodside Rd. Rydal, PA 19046
 Address of Defendant: 3120 S. 3rd St, Philadelphia, PA 19148
 Place of Accident, Incident or Transaction: _____

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

- I, Justin Swidler, counsel of record do hereby certify:
- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 7/13/11

Justin Swidler
Attorney-at-Law

205954
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 7/13/11

Justin Swidler
Attorney-at-Law

205954
Attorney I.D.#

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

TAKAHARU MIZUTANI

Plaintiff

v.

Civil Action No.

THE HAPPY HUCKSTER, CORP. d/b/a FARMART
and STEPHEN KLINGHOFFER*Defendant*

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* THE HAPPY HUCKSTER, CORP. d/b/a FARMART
3120 S. 3rd Street
Philadelphia, PA 19148

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: SWARTZ SWIDLER, LLC
1878 MARLTON PIKE E.,
SUITE 10
CHERRY HILL, NJ 08003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Michael E. Kunz
Clerk of Court

Date: _____

Signature of Clerk or Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TAKAHARU MIZUTANI
726 Woodside Rd
Rydal PA 19046

Plaintiff,

v.

CIVIL ACTION NO:

THE HAPPY HUCKSTER, CORP.
d/b/a FARMART
3120 S. 3rd Street
Philadelphia PA 19148

and

STEPHEN KLINGHOFFER
c/o THE HAPPY HUCKSTER, CORP.
d/b/a FARMART
3120 S. 3rd Street
Philadelphia PA 19148

Defendants.

CIVIL ACTION COMPLAINT

Plaintiff Takaharu Mizutani (hereinafter "Plaintiff"), by and through his undersigned counsel, hereby complains as follows against Defendant The Happy Huckster, Corp. d/b/a Farmart and Defendant Stephen Klinghoffer (hereinafter collectively "Defendants").

INTRODUCTION

1. Plaintiff has initiated the instant action to redress violations by Defendants of the Fair Labor Standards Act ("FLSA"), the Pennsylvania Minimum Wage Act ("PMWA"), and the Pennsylvania Wage Payment and Collection Law ("WPCL"). Defendants intentionally failed to

pay Plaintiff overtime compensation earned while in the employ of Defendants. As a result of Defendants' aforesaid actions, Plaintiff has suffered damages.

JURISDICTION AND VENUE

2. This Court, in accordance with 28 U.S.C. § 1331, has jurisdiction over Plaintiff's federal claims because this civil action arises under a law of the United States and seeks redress for violations of a federal law. This Court has jurisdiction over Plaintiff's state law claim(s) because they are supplemental to Plaintiff's underlying federal claims and arise out of the same transaction or occurrence(s), having the same common nucleus of operative facts pursuant to 28 U.S.C. § 1367(a).

3. This Court may properly maintain personal jurisdiction over Defendants because Defendants' contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice.

4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this judicial district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district and Defendants are deemed to reside where they are subject to personal jurisdiction, rendering Defendants residents of the this judicial district.

PARTIES

5. The foregoing paragraphs are incorporated herein as if set forth in full.

6. Plaintiff is an adult individual with an address as set forth above.

7. Defendant Happy Huckster, Corp. d/b/a Farmart (hereinafter "Defendant Farmart") is, upon information and belief, Pennsylvania corporation which does business at the address indicated in the above caption.

8. Defendant Steven Klinghoffer (hereinafter "Defendant Klinghoffer") is an officer of Defendant Farmart who was responsible for compensating Plaintiff.

9. At all times relevant herein, Defendant Farmart acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant Farmart.

FACTUAL BACKGROUND

10. The foregoing paragraphs are incorporated herein as if set forth in full.

11. Plaintiff was hired by Defendants in or around September 2005.

12. At all times relevant herein, Plaintiff worked in Defendants' warehouse, where he performed routine manual labor and clerical work.

13. Plaintiff spent most of his time performing maintenance on trucks and calling customers regarding overdue invoices.

14. Despite Plaintiff's remedial job duties, Defendants titled Plaintiff with an officer position.

15. However, Plaintiff was never an officer of the company as he never had any discretion in making any decisions which were of consequence to Defendants' business and/or operation.

16. At all times relevant hereto, Plaintiff was not delegated the responsibility to hire employees of Defendant Farmart.

17. At all times relevant hereto, Plaintiff was not delegated the responsibility to fire employees of Defendant Farmart.

18. At all times relevant hereto, Plaintiff was not delegated the responsibility to discipline employees of Defendant Farmart.

19. At all times relevant hereto, Plaintiff was not delegated the responsibility to schedule employees of Defendant Farmart.

20. At all times relevant hereto, Plaintiff was not delegated the responsibility to make meaningful and discretionary decisions regarding the business of Defendant Farmart.

21. At all times relevant hereto, Plaintiff did not perform any meaningful or typical managerial and/or supervisory duties for Defendant Farmart.

22. Employees of Defendants regularly worked for Defendants in excess of 40 hours per workweek.

23. Plaintiff regularly worked for Defendants approximately at least 50 hours per workweek.

24. However, Defendants failed to pay any employee, including Plaintiff, at the rate of 1.5 times the regular rate of pay for each hour that each worked in excess of 40 in a workweek.

25. In or about late September to October 2010, Plaintiff approached Defendant Klinghoffer and complained about Defendants' failure to pay overtime to its employees.

26. Defendant Klinghoffer became angry at Plaintiff for raising the issue of overtime and informed Plaintiff he would not pay any overtime.

27. Soon thereafter, Defendant Klinghoffer began to assign Plaintiff unreasonably burdensome tasks outside of Plaintiff's normal job duties.

28. On or about December 30, 2010, Defendant Klinghoffer fired Plaintiff.

29. Plaintiff was terminated for complaining about Defendants' failure to pay overtime.

30. As a result of Defendants' aforesaid illegal actions, Plaintiff has suffered damages.

COUNT I
FLSA
(Failure to Pay Overtime Compensation)

31. The foregoing paragraphs are incorporated herein as if set forth in full.

32. At all times relevant herein, Defendants were and continue to be employers within the meaning of the FLSA.

33. At all times relevant herein, Plaintiff was employed by Defendants as non-exempt employees within the meaning of the FLSA.

34. Under the FLSA, an employer must pay a non-exempt employee at least one and one half times the employee's regular hourly rate of pay for each hour worked in excess of forty per workweek.

35. Defendants violated the FLSA by, among other things, not paying Plaintiff at least 1.5 times his regular hourly rate of pay for all hours worked in excess of forty per workweek.

36. Said conduct by Defendants caused Plaintiff to suffer damages.

COUNT II
FLSA
(Retaliation)

37. The foregoing paragraphs are incorporated herein as if set forth in full.

38. Plaintiff's complaint about Defendants' failure to pay employees at least 1.5 times their regular hourly rate for overtime hours clearly constituted a protected activity under the FLSA.

39. Defendants' conduct in terminating Plaintiff for complaining about Defendants' failure to comply with the FLSA is in violation of the FLSA.

40. As a direct and proximate cause of said actions by Defendants, Plaintiff has suffered damages.

COUNT III
Pennsylvania Minimum Wage Act
(failure to pay overtime compensation)

41. The foregoing paragraphs are incorporated herein as if set forth in full.

42. Defendants' conduct in failing to properly pay Plaintiff overtime violated the PMWA.

43. Defendants' aforementioned conduct violated the PMWA and caused Plaintiff to suffer damages.

COUNT IV
Pennsylvania Wage Payment Collection Law
(failure to pay overtime compensation)

44. The foregoing paragraphs are incorporated herein as if set forth in full.

45. Defendants' conduct in failing to properly pay Plaintiff all wages due violated the WPCL.

46. Defendants' aforementioned conduct violated the WPCL and caused Plaintiff to suffer damages.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendants are to be prohibited from continuing to maintain their policies, practices, or customs that violate federal and state law;

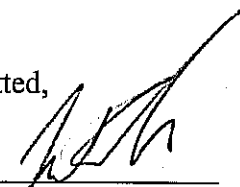
B. Defendants are to compensate, reimburse, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendants' illegal actions;

C. Plaintiff is to be awarded liquidated/punitive damages for Defendants' illegal actions, as provided under applicable law;

D. Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided under applicable law;

E. Plaintiff is to be awarded any and all other equitable and legal relief as the Court deems appropriate.

Respectfully Submitted,

/s/ Justin L. Swidler 

Justin L. Swidler, Esq.

Richard S. Swartz, Esq.

SWARTZ SWIDLER, LLC

1878 Marlton Pike East, Ste. 10

Cherry Hill, NJ 08003

Phone: (856) 685-7420

Fax: (856) 685-7417

July 13, 2011